INDEX

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	4
Argument	15
Conclusion	22

CITATIONS

CASES:

Burton v. *Driggs*, 20 Wall. 125 19
Delaney v. *United States*, 263 U. S. 586 22
Kann v. *United States*, 323 U. S. 88 21
United States v. *Johnson*, 319 U. S. 503 21-22
United States v. *Wood*, 14 Pet. 430 21

STATUTES:

Bankruptcy Act of July 1, 1898, c. 541, § 29, 30 Stat. 544, as amended, 44 Stat. 665, 52 Stat. 855, 11 U. S. C. (1946 ed.) 52(b) 3
Criminal Code, Section 37, 18 U.S.C. (1946 ed.) 88 28 U. S. C. (Supp. V) 1732(a) 4, 19

MISCELLANEOUS:

Wigmore, *Evidence* (3d ed., 1940) Sec. 1230 19

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 684

BELLE MARACHOWSKY, ETC., *Petitioner*

v.

UNITED STATES OF AMERICA

No. 685

J. H. MARACHOWSKY, ETC., *Petitioner*

v.

UNITED STATES OF AMERICA

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (CAR. 12[1]) is reported at 201 F. 2d 5.

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[1] The following designations are employed, in accordance with those employed in the petitions:

CR—the common law record in the trial court

(Footnote continued next page)

JURISDICTION

The judgments of the Court of Appeals were entered on January 7, 1953 (CAR. 13, 14) and a petition for rehearing was denied on February 6, 1953 (CAR. 17). On February 28, 1953, the time for filing petitions for a writ of certiorari was extended by Mr. Justice Minton to March 28, 1953. The petitions for a writ of certiorari were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether, in a trial for false swearing with respect to a claim in a bankruptcy proceeding, the separate instruction requested by petitioner Belle Marachowsky with respect to her right to rely on a purported contract was necessary or proper.

2. Whether certain summaries and expert opinion of an accountant were properly admitted.

3. Whether the evidence was sufficient as a matter of law to support the verdicts on the sub-

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Tr—the transcript of the testimony

CAR—the record of the supplemental proceedings in the Court of Appeals

App. to Pet.—the identical appendices to the petitions, both reproducing the opinion of the court below.

Belle Marachowsky's petition, No. 684, is designated "B. Pet." That of J. H. (Jake) Marachowsky, No. 685, is designated "J. Pet."

stantive counts against petitioner J. H. Marachowsky.

STATUTES INVOLVED

The Bankruptcy Act of July 1, 1898, c. 541, § 29, 30 Stat. 544, as amended, 44 Stat. 665, 52 Stat. 855, 11 U.S.C. (1946 ed.) 52 (b):

> A person shall be punished by imprisonment for a period of not to exced five years or by a fine of not more than $5,000, or both, upon conviction of the offense of having knowingly and fraudulently * * * (2) made a false oath or account in or in relation to any proceeding under this title; or (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in any proceeding under this Act * * *.

Section 37 of the Criminal Code, 18 U.S.C. (1946 ed.) 88:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

28 U.S.C. (Supp. V) 1732 (a):

> In any court of the United States and in any court established by Act of Congress, any writing of record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.
>
> All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

STATEMENT

Petitioners seek review of judgments of the Court of Appeals for the Seventh Circuit (CAR. 13, 14) affirming on all counts but one the judgments of the United States District Court for the Western District of Wisconsin adjudging petitioners guilty, upon verdicts of a jury (Tr. 2881-2882), and imposing fines and sentences as follows: a general sentence of two years' imprisonment and

a fine of $10,000 upon Belle Marachowsky upon seven counts for making false oaths in a bankruptcy proceeding and one count for conspiracy to make such oaths (Tr. 2903-2904); a sentence of five years' imprisonment upon J. H. (Jake) Marachowsky upon each of seven counts for making false oaths in the same bankruptcy proceeding, and a sentence of two years' imprisonment upon a count of conspiracy to make such oaths, all sentences to run concurrently, and fines of $5,000 upon each of substantive counts II, IV, VI, VIII, and X (Tr. 2901-2903).[2]

The evidence in general may be summarized as follows:

During 1945 and 1946, petitioner Jake Marachowsky was president of Portage Wholesale Company. He owned 53 percent of the stock and was the active manager. (Tr. 2229, 2360.) In December 1944, Joseph Blitz and Belle, who was then his wife (and is now Belle Marachowsky, petitioner in No. 684, following a divorce from Blitz and marriage to petitioner Jake Marachowsky[3]), came to Portage, Wisconsin, and Blitz was employed by the wholesale company (Tr. 1697). In 1945 and 1946,

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[2] The judgment on substantive count XIII against Belle Marachowsky was reversed (CAR 13; App. to Pet. 15-16).

[3] Belle and Jake were married in November, 1948 (Tr. 2228). Prior to that time, following her divorce from Blitz in October, 1947, she had resumed her maiden name of Belle Cantel (Exh. 220).

Blitz had his headquarters in New York City. On behalf of Portage, he sold butter, eggs, cheese, corn syrup and dextrose (corn sugar) on the black market. Blitz worked under the supervision of Jake (Tr. 995, 1004-1005) and made frequent collections in cash (Tr. 996-997). From time to time, Blitz and Belle carried the money from New York to Portage (Tr. 962, 1078-1079, 1107).

Blitz was employed on a commission basis (Tr. 1052). Jake testified that Blitz handled products for the Company on a brokerage basis. But Portage owned the merchandise at all times and did not sell to Blitz. (Tr. 2436-2437.)

When a car of merchandise was shipped on open bill of lading, Blitz would sell the car and deliver the bill of lading. When a car was shipped on sight draft Blitz would at times pay the draft with cash of Portage and then sell the car. (Tr. 1003.)

During 1946, one John Olson was employed by Portage to purchase butter, cheese, poultry and corn in Iowa and Nebraska. Olson used checks of Portage to make purchases and also received quantities of cash totalling upwards of $75,000 which he used in buying corn and dairy products. (Tr. 2174-2176, 2181, 2184.) Belle handed currency to Olson on a number of occasions, always in Jake's presence. Olson always accounted to Jake for the cash. (Tr. 2174-2180.) Jake gave Olson all his instructions; Belle gave Olson no instructions (Tr. 2211-2212.) Olson (who was called

as a defense witness) always thought he was working for Portage (Tr. 2220) and considered Belle as only an agent of the Company (Tr. 2226).

At the beginning of 1947, Jake resigned as President of Portage. (Tr. 225, 227.) On January 21, 1947, a petition for arrangement was filed under Chapter XI of the Bankruptcy Act. On January 16, 1947, just before the arrangement proceedings began, Belle sued Portage for $36,000 allegedly loaned to it between September 1, 1946, and November 30, 1946 (Exh. 179, Tr. 1445). Robert Goetz, who had been chief accountant of Portage, supervised the preparation of schedules of creditors. The records disclosed no amount owing to Belle. (Tr. 228.)

At about the time the arrangement proceedings were begun Blitz commenced a divorce action against Belle. On April 11, 1947, Belle testified on adverse examination in this action that the $36,000 for which she had sued was all that the Company owed her. (Tr. 1993-1994.)

On August 28, 1947, Belle filed a claim in the Chapter XI proceedings for $67,926.06 (Exh. 4). On October 20, 1947, Belle filed a bill of particulars in support of this claim in which she stated that no notes or other written evidence existed to support her claim except for certain checks listed therein (Exh. 5).

On October 29, 1947, Belle filed a federal income tax return for 1946 reporting a capital gain on corn

of $108,267.91 and claiming a non-business bad debt of $81,776.04 from Portage. (Tr. 2002-2003.)

On March 22, 1948, at an adverse examination in connection with her claim, Belle produced a series of receipts or invoices, Exhibits 11 to 16, inclusive. These invoices were partly in Jake's handwriting and partly in Belle's, and purportedly had been prepared in the summer of 1946. Belle could name no one, except Jake and herself, who had ever seen these invoices before March 22, 1948. (Tr. 2004-2005.) On June 11, 1948, Belle filed an amended claim for $126,780.09 (Exh. 6). In July and August 1948, hearings were had on Belle's claim before the Referee and it was at these hearings that Belle and Jake gave the testimony involved in the indictment. Six specific amounts, purportedly due Belle from Portage by reason of her lending of money or ownership of carloads of commodities involved in six different transactions, were each the subject of testimony by Belle and by Jake, the allegedly false testimony by Belle being the basis for counts I, III, V, VII, IX and XI, and that by Jake, counts II, IV, VI, VIII, X and XII. Jake's testimony that the receipts or invoices, Exhibits 11-16, had been credited on the books became the subject of count XIV. In count XV a conspiracy of Belle and Jake to commit the substantive offenses was charged (CR. 9-27).

Petitioner Jake Marachowsky attacks the sufficiency of the evidence to support his convic-

tion on the substantive counts. Accordingly, we summarize here the evidence bearing on counts II, IV, VI, VIII, and X, the counts on which the fines were imposed, since any one of the counts is sufficient to sustain his prison sentence.

Count II—Figge Transaction

The first allegedly false claim of Belle regarding which Jake was charged with a false oath in the bankruptcy proceeding was a claim for $32,999.17. In that proceeding he testified that he had signed a purported receipt dated July 17, [1946] (Exh. 11) acknowledging for Portage receipt of the stated sum from Belle; that the amount had been received at the bank for the credit of Portage but was "her money"; and that the subsequent distribution of the sum, $12,999.17 to an affiliate of Portage and of the remaining $20,000 to Portage direct, was pursuant to Belle's consent (Tr. 57-58). As against this testimony Portage's books placed this exact sum of $32,999.17, not to Belle's credit, but as a credit to overpayments for butter (Exh. 48). Jake admitted that he told his accountant, Goetz, that the $32,999.17 was a refund of money "due the Portage Wholesale Company from some butter transactions" (Tr. 1518).

Figge, the creamery operator who had sent the $32,999.17 to Portage (Tr. 159), testified that he had never had any business dealings with Belle and that she had never given him any money (Tr. 166a-

167, 171-172). He was corroborated by his books, which showed that the $32,999.17 that he had sent to Portage balanced an amount by which he had been overpaid by Portage (Exh. 111, Tr. 155).

Belle's testimony in her divorce proceedings and in a suit against Portage in 1947 also contradicted Jake's testimony. She attested a debt arising from checks delivered by her in the presence of Jake and his brother—not a debt evidenced by any such written receipt as that to which Jake testified at the bankruptcy hearing—and her debt was in the amount of $36,000, allegedly all accrued subsequent to September 1, 1946 (Exh. 179, Tr. 1445, Tr. 1510-1511, 1993-1994).

Count IV—Spiritus Butter Transaction

Jake testified in the bankruptcy proceedings with respect to a claim of Belle against Portage for $27,240.57, purportedly evidenced by a receipt or invoice signed by Jake for Portage (Exh. 12, Tr. 71), that he did not have the money to pay for a certain carload of butter in New York and asked Belle to pay for it, that the car was released to one Spiritus, and that when the Spiritus check came he "credited that to Belle" (Tr. 72-73).

Belle had previously testified before the Referee that Jake's instructions to her had been "to give Mr. Spiritus the money to pick the draft up with, and then he could later remit it to the [Portage] Wholesale [Company.] And that is the way that

was handled." (Tr. 59-63, 68.) It was this story that Jake was supporting when he testified that he asked Belle to pay for the car (Tr. 72-73). Jake's own testimony in the present proceeding, reiterating the alleged incident he was confirming to the Referee, was as follows (Tr. 2300):

> Q. And what was the substance of the conversation with Belle Blitz?
>
> A. Well, I asked her if she could and would furnish the moneys to Milton [Spiritus] to pick up this car of butter in the amount of $27,000. And she said she would.

Spiritus' testimony was an outright denial of any financial dealings of any kind with Belle and of any payment of the draft by him (Tr. 360, 505-506, 518-519). Moreover, the books of Portage showed that the $27,240.57 check of Spiritus had been credited to Spiritus and never to Belle (Exh. 52, A, B, and C). It was stipulated that the car had been billed to Portage, care of Blitz, and that the draft paid for the car was $26,856.90, not $27,240.57 (Tr. 522). Since Jake himself testified that Portage was intended to have, as a profit, the substantial difference between the amount of the draft and the amount Spiritus paid (Tr. 2375-2376) the amount due Belle, if there had truly been an advance, would have been stated at $26,856.90.

Count VI—Spiritus Cheese Transaction

Jake testified before the Referee with respect to another claim of Belle, in the amount of $10,000. He was shown a purported receipt or invoice, dated July 29, 1946 (Exh. 13), signed by him for Portage, stating "Check received Spiritus. Your account credited $10,000 today, payable to Belle Blitz on demand." He was asked what this credit was and how it arose, and he testified that upon the arrival of a car of cheese in New York, Spiritus "didn't want to pick up the draft" and Jake asked Belle "if she would advance the money". (Tr. 79-80.)

Spiritus, on the other hand, testified at the trial that Belle had neither furnished him the money to lift the draft nor had any transaction with him about the car of cheese (Tr. 380, 506). His records showed that he had himself picked up the draft, out of monies furnished by Joe Blitz (Exh. 124 and 124A (July 24, 1946); Tr. 373-375).

The Portage records showed crediting of the $10,000 check of Spiritus for the car, not to Belle, but to Spiritus (Exh. 52, A, B and C); moreover, a memorandum emanating from Jake stated Jake's recollection that Spiritus "advanced" $10,000 on the car (Exh. 144). And, as in all these transactions, Belle's prior testimony contradicted Jake's. *Supra*, p. 10.

Count VIII—Brockelman Transaction

Jake testified with respect to a further receipt or invoice, purportedly dated September 14, 1946, in which he had acknowledged a claim of $26,179 by Belle upon Portage (Exh. 14), that this was a "credit" that he "understood was hers at that time, when [he] had the records before [him]" (Tr. 92). Belle, in testimony before the Referee, had asserted that the sale of the two cars of syrup and one of dextrose involved in this claim had been personally made by her and that she had owned the cars (Tr. 86-90).

The Portage books and records showed, however, that the $26,179 was a payment to Portage for two cars of syrup and one of dextrose, which Portage had originally bought and paid for (Tr. 1435, 1437, 1440-1442) and which Portage had invoiced and shipped to Brockelman Brothers (Exh. 69, 70, 71, 164; Tr. 1135-1136). Portage also wired Brockelman Brothers asking for an advance of $26,000 (Exh. 171, Tr. 1134-1135).

The testimony of a witness Robinson, who handled the transaction for Brockelman Brothers, restricted the dealings to contacts with the Marachowsky brothers and denied any business dealings with Belle (Tr. 1133-1135, 1145-1149). Robinson testified that the cars were paid for by funds wired to Portage's bank for the account of Portage, and his records corroborated him (Exh. 172-174, Tr. 1138-1141).

Count X—Morrison Transaction

Jake was questioned in the bankruptcy proceedings about a "receipt" for $13,648 due Belle, which he had signed for Portage under the purported date August 28, 1946 (Exh. 15). He testified that it was for "money that was due Belle * * * that had been credited to [the Portage] account at the Home Savings Bank" (Tr. 99). Belle's testimony, two days before, had been that the credit had arisen out of a sale of a car of syrup owned by her (Tr. 96-98).

The books of Portage showed that on August 19, 1946, Portage had paid for the car of corn syrup here involved (Tr. 281E, 1020, 1523-1524, 1568). The car was invoiced to Joe Blitz—corn account, at $5,607.28 (Tr. 1568; Exh. 140) and when payment of $13,648 was received from the real purchaser, Morrison, doing business as Peak Products Company, the amount was credited in the cash book to Blitz Products Company (Exh. 50, p. 25) and posted to the credit of Joe Blitz (Exh. 54).

As a living witness to the falsity of petitioners' testimony, Morrison himself testified that he ordered the car of syrup from one of the Marachowskys, that he made his payment to Portage, and that he had had no dealings whatsoever with Belle (Tr. 709-714).

ARGUMENT

1. Petitioner Belle Marachowsky, referring to an alleged contract under which Jake Marachowsky, for the Portage Company, purported to assume certain obligations to her which she later sought to enforce in the bankruptcy proceedings,[4] complains (B. Pet. 24-25) of the trial judge's refusal of her sixth requested instruction as follows (Tr. 2831):

> It is immaterial whether the written contract Ex. 322 would be legally binding upon the Portage Wholesale Company in a civil suit. Unless the Government has proved to your satisfaction beyond a reasonable doubt that the said written contract was not made in good faith and as part of a fraudulent scheme, then you are instructed that Belle Marachowsky had a right to rely upon the said contract; present her claims and attempt to recover what she believed she had coming from the transactions arising out of or described in said contract.

Petitioner now concedes that the first portion of the requested charge, relating to the question of the "legally binding" effect of the contract, "might be objectionable because confusing" (B. Pet. 25), but continues with the objection that the

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[4] The text of the contract (Exh. 322) referred to in the proposed instruction appears at B. Pet. 9.

remainder of the instruction should have been given in order to present the issue whether her allegedly false statements were made in "good faith" and not "willfully."

The court below concluded, we submit correctly, that this remaining portion was fully covered in the instructions given by the trial judge (App. to Pet., p. 20). The trial judge, summarizing the indictments and the statute, twice employed the specific phrase "knowingly and fraudulently" in characterizing the offense, and he added, in the summary of the indictments, the phrase "willfully and falsely" (Tr. 2840-2841). In summarizing the conspiracy count he employed the words "willfully and knowingly" (Tr. 2842). Even more specifically, the judge charged (Tr. 2850):

> [I]t is not an offense if a person swears to something which he believes at the time to be true, even though in fact such testimony was false. It is not an offense to be mistaken. There must be a wilful and conscious swearing to that which the person knows is not the truth.

And he specifically charged as to each of counts I to XIII, inclusive, a total of seven times, as follows (e.g., Tr. 2853):

> [I]f you find that the defendant's testimony before the Referee was false, as alleged, you

> must also believe beyond a reasonable doubt that he or she wilfully testified falsely, and that he or she knew and believed his or her testimony was false at the time he or she testified.

The jury would assuredly have been confused, at the least, had the contract been singled out for additional and special instruction. Moreover, the proposed instruction was not correct since it would have permitted the jury to acquit Belle if it found the contract to have been made in good faith, even though Belle subsequently learned of its fraudulent nature before giving the false testimony. What is clear and decisive, in any event, is that the jury was amply charged on the requirement of wilfulness, so that petitioner errs in arguing that the requested instruction, admittedly confusing at best, was additionally necessary for this purpose.

2. Both petitioners complain of the admission in evidence of Exhibits 317 and 318, being summaries of accounts prepared by the government accountant Price. They also complain of his conclusion therefrom that there was no separate credit balance of $127,602.80 due a purported "Blitz Products Company" and no separate debit balance of $30,196.23 and $114,935.47, respectively due from Joe Blitz and "Joe Blitz, corn account," but only a single account receivable under which a net balance was due from Joe Blitz to Portage Whole-

sale Company. (B. Pet. 2-3, 24, 27-38; J. Pet. 2-3, 6-7.) Petitioners seek to maintain this argument that the accounts were separate, so that they may advance the further contention that the separate credit balance of $127,602.80 purportedly due "Blitz Products Company", "indicated" an obligation to Belle "in at least the amount of $126,780, which was the total amount of her claim" (B. Pet. 29).

The government accountant, Price, clearly based his summary and his opinion on proper sources. The records of Portage showing its accounts receivable consisted of individual sheets for each account, prepared on a bookkeeping machine (Tr. 237). Price employed the carbon copy of the account sheet in the name of Joe Blitz. By checking original invoices and entries of cash receipts against the account receivable sheet, he found that, while the invoices and entries had been variously written as dealings in different names (*e.g.*, "Joe Blitz", "Blitz Products Company", and "Joe Blitz-corn account"), they had been posted to the one account of Joe Blitz (Tr. 1580-1581, 1586-1590, 1596-1599).[5] The carbon account sheet was clearly identified as "a Portage Wholesale Company record" (Tr. 278, 1317, 1615) and it was received in evidence without objection by petitioners, their

[5] To the same effect in testimony of a Portage company bookkeeper see Tr. 1242-1244.

only reservation being that it should not be of "binding effect" on them or conclusive of the facts thereby attested (Tr. 508).[6] The summary and conclusion, and the records upon which they were based, were thus clearly admissible. 28 U.S.C. 1732(a), *supra*, p. 4; *Burton* v. *Driggs*, 20 Wall. 125, 136; Wigmore, *Evidence* (3d ed., 1940), Sec. 1230.

But apart from the fact that petitioners' attack on the accountant's summary and conclusion is without basis in the rules of evidence, their own

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[6] The account sheet of which petitioners complain was not made the less a regular business entry by the facts that it was a carbon copy, that the ribbon copy was missing (Tr. 399), and that Blitz received it in the mail from a source he could not identify. There was clear testimony, as we have shown in the text, that the sheet was in fact a Portage Company record, amply sustaining the conclusion, even apart from petitioners' failure to object, that it was properly admitted as such.

Nor is the regularity of the accounting practice negated by Blitz' denial of liability for the items regularly billed to him (Tr. 1018, 1055-1057, 1073-1074) or by an over-all arrangement with Jake that the billings were to be to Blitz as a cover for over-ceiling transactions which were for the ultimate benefit of Portage Wholesale Company (Tr. 1074). The government accountant purported to summarize only what the records showed. The jury could believe the records or could believe other evidence contradicting the truthfulness of the records but, as stated in 28 U.S.C. 1732(a), the "circumstances of the making of such writing or record * * * may be shown to affect its weight, but such circumstances shall not affect its admissibility." The propriety of admitting Price's summary of *what the records showed* remains unchallenged by these side-issues urged by petitioners.

testimony refutes the conclusion for which this attack is pressed. For Belle repeatedly testified that she had never heard of such a company as Blitz Products Company and had never had any relationship of any kind with such a company (Tr. 600-601, 1513, 2068) while Jake denied that there had ever been such an account as Blitz Products Company (Tr. 2359-2361). Against this testimony, it is impossible to perceive how petitioners can claim that a jury could have found that an account with this imaginary company "indicated" a debt from Portage to Belle.[7]

3. Petitioner J. H. (Jake) Marachowsky contends, finally, that the evidence against him on the substantive counts was insufficient under the rule prohibiting a conviction for perjury upon anything less than the oath of at least one corroborated

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[7] Petitioners also complain of the belated bringing in of the general ledger and of the inadequacies of general journal entries, and they complain of Price's failure to attempt a balance of the accounts receivable ledger with the general ledger (B. Pet. 35). But the available and pertinent records, as aptly pointed out by the court below (App. to Pet., 21-22), "were all introduced in evidence or made fully available to defendants before the conclusion of the trial, when it was still possible to cross-examine the auditors or to recall them for additional cross-examination." See Tr. 481-482, 1545, 2390, 2822. It was not incumbent upon Price to wander afield into reconciliations with other types of records that were concededly incomplete, or to deal with items as to which no issue existed.

witness (J. Pet. 7-22). Accepting *arguendo* the assumption (also accepted for purposes of this case by the court below, App. to Pet. pp. 6, 9) that the traditional rule of proof in perjury cases applies here at all, it is clear that petitioner's attack on the sufficiency of the evidence is without merit.

It may be noted, first of all, that the falsity of Jake's testimony is proved by documents emanating from the accused himself so that the requirement of living witness plus corroboration is absent here. *United States* v. *Wood,* 14 Pet. 430, 440, 444.[8] But while Jake's books would alone dispose of the case, there was testimony by at least one witness plus various corroborating evidence (including the books) to sustain the jury's verdict on each count. Summarized above (pp. 9-14) and carefully analyzed in detail by the court below (App. to Pet., pp. 9-16), the clear sufficiency of this evidence scarcely requires further discussion here or further review by this Court. See *Kann* v. *United States,* 323 U.S. 88, 93; *United States* v.

[8] The books of Portage Wholesale Company were clearly documents emanating from Jake. He was the active manager and ran the business (Tr. 1448, 1457, 2360). The bookkeeper Cook wrote on the invoices only "what [Jake] instructed me to put on them" (Tr. 1359). Jake directed how receipts were credited (Tr. 1252, 1254). The jury was entitled to believe Jake's brother when he denied having had anything to do with the company books (Tr. 1448), and to believe bookkeeper Huschka's recollection that Jake himself gave instructions for entries in the books (Tr. 1242).

Johnson, 319 U.S. 503, 518; *Delaney* v. *United States,* 263 U.S. 586, 589-590.[9]

CONCLUSION

The questions presented were correctly decided below and are, in addition, so lacking in substance and so peculiar to the facts of this case as to deprive them of general importance. No conflict of decisions or constitutional question is involved.

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[9] Petitioner suggests (*e.g.,* J. Pet. 12) that the testimony of various witnesses that they purchased from Portage and dealt only with Portage attests the falsity only of Belle's testimony that she herself sold the various items, but does not show any falsity in Jake's testimony that various debts were due Belle. This contention simply misconceives the character of Jake's testimony by disregarding altogether the critical fact that the testimony was given in the same Referee's hearing in which Belle had just testified two days before that she had not only furnished money or owned certain property but had herself delivered the money or sold the property to this or that person. Jake's confirmations of the various alleged debts to Belle were thus plainly and precisely designed to support her claims that she had done certain acts, conducted negotiations, or made sales. So, for example, when Jake testified that he asked Belle to pay a draft for Spiritus and credited Spiritus' check to her for that payment, this was proved as false as Belle's testimony to the same transaction by direct evidence which showed that Belle never made any such payment and that Jake never had occasion, therefore, to record any such credit. See p. 12, *supra;* cf. J. Pet. 11-12.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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